SPEECH

OF

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ON

THE POWER OF CONGRESS OVER THE TERRITORIES.

DELIVERED

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THE POWER OF CONGRESS OVER THE TERRITORIES.

In Committee of the Whole on the state of the Union, on the President's Message transmitting the Constitution of California.

Mr. DISNEY said:

Mr. CHAIRMAN: This subject has so thoroughly occupied the public mind, and been so much discussed, not only in public, but in private, that, at this late day, no new light can be thrown upon it. Occupying, however, what may be considered by some as a somewhat singular position in relation to it, individually, I feel that perhaps I may be justified in venturing upon the patience of the House, for the single purpose of disembarrassing my own action hereafter. I do not hope to influence the opinions of others, whether inside or outside of these walls; but I wish simply to place myself right before the country—right at home, and right abroad.

The public feeling in relation to slavery in the territories, is intense, and that very fact has added not a little to the difficulties in the way. Prejudice has been aroused, the sympathies and the interests of one section of the Union has been arrayed against the other, and a heat and temper has been begotten, altogether unfavorable to that kind of settlement of the matter, which alone can render it satisfactory. It is only when the passions are at rest that the mind is free, and temper should be driven from the judgment-seat when we would settle affairs such as this. It is, however, no new question—it shook the Union in 1820. Then, as now, excitement was abroad. The public mind was thoroughly agitated. Legislative bodies, religious societies, private individuals, and town-meetings, spoke out their feelings and opinions. The subject was examined with the utmost care. Investigation followed investigation—discussion followed upon discussion. The records and history of the country were searched, every fact was paraded, and the best intellects of the country added their commentaries, and published their opinions. But after all, the question was evaded—expediency took the place of right, and the matter was compromised. The principle was referred to geography for its settlement, and the distance of its application from the equator was left to determine the constitutional right. As a question of right, the result was absurd enough; but it stilled the storm. The mouths of men were stopped by their love of quiet; but the progress of events has brought the question back; and though it may be again postponed, a decision must be had at last, and, in my opinion, the sooner it is had, the better for all parties. In my judgment, the danger is not in action, but delay. I would not create a dangerous future for the sake of a present safety; but I would settle the principle at once, and let the consequences come.

I have no apprehensions for the safety of the Union; the strong, good sense of the American people will, I know, preserve it. This Union will long outlive the schemes of politicians, and the passions of the hour. The people understand and appreciate its blessings, and after subtlety has exhausted its arguments, and policy has overreached itself, if it be necessary, they will take this matter in hand, and with more wisdom settle it as effectually as it could be done by all the statesmen in the land. Eminently practical, the people view these things in the strong but common light of every-day life. No sophistical cobwebs can impede their path; they look to results, and when aroused to action, they march to the object by the straightest road.

The questions with which we have to deal, are well defined: Has Congress the power, under the Constitution, to prohibit slavery in the territories, and if it has, is it expedient to exercise it? They involve momentous issues, and I would approach them in a proper spirit. In their discussion, strong men have been arrayed against each other—reasons have been given, and antagonistic conclusions drawn. The affirmative has been announced with oracular tone, and the giving out has been coupled with a more than hint, that to doubt it, is to peril the reputation of one's mind. Let it be so; with such people I do not reason. A triton among the minnows may talk large, but the style strikes me as out of place among reasoning men. Ignorance, sir, naturally flies to pretension for protection, but whether it can prove a shield of safety, depends much, very much, on the temper and the taste of the antagonist.

The power claimed, we are told, may be deduced from that clause of the Constitution which relates to the territory and other property of the United States. Let us examine it The words are:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

The power granted here, is obviously the same, whether in relation to territory, or to other property. It is the same in relation to each, and to both. Territory is spoken of as property, and the clause embraces it with all other kinds, and

confers upon Congress the power to dispose of, and to make rules and regulations in regard to, all the property belonging to the United States, territorial and otherwise. The adjective fixes the relation of the words, and marks the meaning. "*Other*" means, not the same in identity, but the same in general character, and "*territory*" and "*other property,*" is precisely equivalent, in phraseology, to "territorial *property* and other *kinds* of property." A grammatical analysis exhibits the same, and a common general meaning of the words "territory" and "property" as they stand in this clause of the Constitution, and every rule of construction under the idiom of our language, fixes the precise and single meaning of the phrase. The words themselves are simple, and of common use; and the form in which they are arranged, really seems to defy a misconstruction. The opinion of the Supreme Court is clear. In the case of the Cherokee nation against the State of Georgia, 5 Peters, the Court declared, that "the term territory, as 'here used, is merely descriptive of one kind of 'property, and is equivalent to the word lands."

The power given, is the power to dispose of—that is, to alienate, and to make all needful rules and regulations respecting the territory, not for the government *of*, but in relation *to*, the territory belonging to, and owned by, the United States. The power to alienate, of course, can only have reference to the territory as property, and it is just as clear, that the power to make rules and regulations, has reference to it in the same character. The Government can neither alienate its jurisdiction, nor delegate its legislative power. It can *dispose of* neither, but must exercise both, if they be required.

The power to make rules and regulations, in its common form, is usually applied to things. We say, the rules and regulations of business; the rules and regulations of the House; but we speak in the abstract of the things, and the effect of the rules on persons, is simply a result from their connection with the things. The power to make rules and regulations, is certainly the power to legislate to some extent; but it is to be understood as a legislation inferior to the making of laws affecting questions of right. We use the phrase in relation to matters of police, but it is never understood as embracing the higher attributes of legislative power. A power to make laws embraces the power to make rules, because the greater includes the less, and the power to regulate *may* embrace the power to make laws; but they can only be such laws as are necessary to regulate the things. The books recognize the distinction. In Campbell *vs.* Hall, Cowp. R. 204, Lord Mansfield said:

"The statute of Wales, 12 Ed. I., is certainly no more than *regulations*, made by the King in his counsel; for Edward I. never pretended that he could, without the assent of Parliament, make *laws* to bind any part of the realm."

An inferior power may establish rules, but it requires the highest authority to enact a law. A power to alienate, and to make needful rules for territorial and other property, is symmetrical, and is properly expressed in the form in which we find it; but the words cannot be made to involve the higher power of making laws. To suppose that the general law-making power, and the power of regulating and alienating things, are both conveyed by, and together, and in the same words—and words which so evidently have a different meaning—is, when we reflect upon the importance of the instrument in which they are used, to attribute an ignorance or carelessness to the writer of it, which his own express declaration, and our knowledge of him, emphatically contradicts. Indeed, it may be safely said, that if the phraseology were presented in relation to any ordinary affair, no two men would differ in regard to either its critical or apparent meaning. Then why wrest and torture it from its natural and obvious purpose?

The paragraph closes with a proviso, that "noth-'ing in the Constitution shall be so construed, as to 'prejudice any claims of the United States, or of 'any particular State." Claims to what? Claims to the power of legislative jurisdiction, or to claims for land—to claims for property? It was property, and property alone, that was in dispute. The rights reserved, were rights to which conflicting claims were urged by particular States—claims in opposition, as well between the States, as in opposition to the United States. The legislative rights of the United States were supposed to be well defined, and no dispute could be expected, except in regard to property. A right of legislative power will follow the right of property in a State, because the sovereignty of the State is original and inherent, and in a reservation of property, a local legislative power may be reserved to States; but the legislative power of the United States is not only specially defined, but is made supreme; and, therefore, when it conflicted with the legislative power of the States, no additional saving clause was needed for its protection. Besides, we know the fact, that no claim on the part of the United States, to the power of local legislation, was involved in the dispute. Thus, whether we consider the mere phraseology of the instrument, or the subjects upon which the power of Congress may act, the character of the power given, or the reservation of rights as expressed in the proviso clause, we find in each and all one common meaning—a meaning which defines the entire clause, as relating to the territory, solely as property belonging to the United States. And though we might otherwise give but little weight to a mere grammatical construction of the paragraph, yet the fact of its concurring so precisely with the general scope and tenor of the Constitution, should render it conclusive.

It is true, that the power of local legislation is given to Congress in relation to certain places; but these places are distinctly named, and the territory of the Union is not among them. Why not? How easy and natural it would have been to name it among the rest? and because it was not named, we are now to hunt up some other clause and imagine that the power was hidden there—hidden, too, under what we must assume to be a loose and careless phrase, because if there, it is mingled with other matters. Men do not generally reason so, nor is it natural that they should. Are we to suppose, that after a careful enumeration of petty places, in which the power might be used, that the framers of the Constitution left the same power to doubt and misconstruction, when considered in relation to the vastly more important regions—the territories of the Union? Were they particular and exact in relation to small matters, but careless and indifferent in regard to great ones? The instrument itself warrants no such belief. Its

language is precise and clear. The man who wrote it, knew and understood the force and meaning of every word. "Having rejected redun-'dant and equivocal words, (said he,) I believe it 'to be as clear as our language would permit." The men of 1789 were jealous of the power which they conferred upon the General Government. They gave it none but what they believed was absolutely required, and they were particular and exact in relation to the form in which the powers were conveyed, and I believe they meant precisely what they wrote. Their words, limit the power of Congress over the territories, to the power of making rules—needful rules—or such as necessity required. But there was a conclusive reason why the territories were not, and could not, be included among the places over which Congress might exercise that power. The functions of the General Government were intended to be exclusively national in their character, but self-preservation, and the dignity of the Government, demanded that Congress should be clothed with the power of exclusive legislation in the ten miles square. And it was supposed that its necessities would demand a like control over forts, arsenals, and dock-yards, though even in these cases, it was granted as a contingency, dependent, for the acquisition of their territory, upon the consent of the legislatures of the States within whose limits they might be. But in the character of the territories, there is nothing which could render a similar power over them necessary, either to the safety of the Government, or to the exercise of any of its enumerated powers—in other words, the power is contrary to the general objects for which the Government was created, and was therefore granted only so far as necessity required; and as the territories were not within the rule, they were of course omitted. Thus, examine as we may, the power claimed has no sanction in either the letter or the spirit of the law. The Constitution is the chart of the General Government. It prescribes its duties, and both grants and limits its powers; and if the power to legislate for the people of the territories cannot be found within it, no such power exists. The letter of the law, or a necessary implication, alone can grant it; and in searching for it, I prefer the text to any commentary as my guide. The text shows no such power.

If we look behind the Constitution, and trace the history of territorial acquisition by the Federal Government, we find, that with the commencement of the revolutionary war, claims were put forward, by different colonies, to large tracts of country lying beyond, and without, both their actual settlements and jurisdiction. The boundaries of the provinces were ill defined, and different colonies claimed the same region. Each maintained its own pretensions, and, as early as 1779, Virginia opened an office for the sale of such unappropriated lands. This step gave great dissatisfaction, and several of the colonies refused to ratify the articles of confederation. They contended, that these lands ought to form a common fund, for the benefit of all the States; and in addition, urged that the possession of such large tracts would render any State too powerful for the safety of the rest. Congress endeavored to settle the dispute, and recommended a cession of the lands to the Federal Union; and, finally, to satisfy all parties, and to promote the desired object, that body, on the 10th of October, 1780, resolved, "that the un-'appropriated lands that may be ceded, or relin-'quished, to the United States, by any particular 'State, shall be *disposed of* for the common benefit 'of the United States, and be settled and formed 'into distinct republican States, which shall become 'members of the Federal Union, and have the same 'rights of sovereignty, freedom, and independence, 'as the other States;" and, "that the said lands 'shall be granted, or settled, at such times, and 'under such *regulations*, as might be made by Con-'gress." To this resolution, Virginia finally conformed her deed of cession, and Congress assumed the power to carry out the agreement. Whether it legally possessed it under the articles of confederation, was subsequently doubted. Mr. Madison, we know, emphatically denied it. In the formation of the Constitution, as well as in the adoption of the articles of confederation, attempts were made to settle the general question of ownership and power over the territories; but the dispute continued, and the efforts failed.

When the Constitution was formed, it became a necessity to remedy the defective power of Congress in regard to the territory, then held by cession from Virginia. The resolution was a pledge of the public faith. To redeem it, Congress needed the power to dispose of the lands in that territory as a common fund, the power to make regulations in order that they might be settled, and the power to require them to be formed into distinct republican States; and, as no one could object to this, the proper provision was adopted, with a general saving clause in relation to the rights of parties to the old dispute.

Here, then, stands the history of the case. In 1780, Congress pledged itself to dispose of all lands ceded to the Federal Union, so as to form a common fund, to grant, or cause them to be settled, and to form them into distinct republican States. In consequence of this, in 1784 Virginia ceded the Territory of the Northwest; and in 1789 a new Constitution was formed, which, upon this subject, merely conferred upon Congress the power "to dispose of, and make all 'needful rules and regulations respecting, the ter-'ritory or other property belonging to the United 'States." And with these facts before us, who can doubt? The grant of power follows the very words of the resolution of 1780—*to dispose of*, and *to make regulations; to dispose of* as a common fund, and to make regulations to cause the lands to be settled. And even the power to make the regulations—limited to such as might be needful for the object in view—restrained to the lowest degree which could enable Congress to fulfill the terms upon which Virginia made her cession—barely the power to redeem the public faith.

I speak of Virginia's cession, because that embraced the only territory then possessed by the Federal Union. The strip ceded by South Carolina was unimportant. It was only Virginia's cession which was held in view; and it is only "territory," in the singular number, that is spoken of in the Constitution. The very order in which the subjects of that instrument are arranged, exhibits the train of thought in its formation, and shows how literally the resolution of 1780 was copied. Its next succeeding lines guarantee a republican form of government to every State in the Union. So stand the facts—so reads the history on this

subject. They mutually concur. The written Constitution conferred no power on Congress in regard to territory, except in relation to the old Northwest; and in regard to that, it defined and limited it to specific and narrow bounds—and history shows that such was the intention. Congress, then, must seek the power elsewhere than in that clause of our organic law.

But, we are told, that the practice of the Government has settled the question of power in favor of Congress. If we admit the practice, the fact should have little weight, because no practice can be esteemed authority, when it conflicts with the letter and spirit of the law. In questions of doubtful power, practice, perhaps, should turn the scale; but when practice conflicts with the spirit of the law, the law should correct the practice. Precedent too often bears down the law, and rather than an example, should be a warning. It is the guardian of power's ill-gotten gains. The insect of the sea can rear a wall which will wreck a fleet; and with its slow and silent steps, precedent would even bind the people in its chains. It is, however, the privilege of our day to inquire into the right of things. No lapse of time, nor venerated name, can consecrate a wrong. The spirit of the age throws off the fetters forged by the folly of the past. The error of accident, repeated by carelessness, creeps into precedent, and claims to be authority; but its real power can only be known when tested by the Constitution and the laws. Pretensions of this sort have been overthrown more than once, as the history of our country shows. Constitutional governments should scrutinize their usages with severity. Like the mariner at sea, it is only by observations that they can ascertain their progress. When the surveyor doubts the accuracy of his work, he refers to his starting-point to correct his errors; and we must constantly recur to the fundamental principles of our Government, if we would keep it within its proper limits. These principles, and these principles alone, can determine the truth and justice of its course.

But what is this practice? The Territory of the Northwest, when ceded to the Union, was sparsely populated, and it was supposed that the thin and scattered numbers of its people rendered them unable to provide or sustain a government for themselves. To aid them, the ordinance of '87 was passed. It provided rules for landed estates, authorized the appointment of a few civil officers, required the judges to adopt some of the laws of the original States, and provided that, as soon as there should be five thousand free male inhabitants, of full age, in the district, they might elect a House of Representatives, and organize a legislature to make their own laws. It gave to, or recognized in, that body, authority to make laws in all cases not repugnant to the principles of the ordinance, authorized them to appoint a delegate to Congress, and proceeded to declare what it styles a compact between the original States, and the people and the *States* in the said territory; which compact, it declared, was to forever remain unalterable, unless by common consent. This looked to its operation on the people there, as well after as before they were organized into States; and among its provisions is found the anti-slavery clause. In 1784, Mr. Jefferson had offered a proposition to prohibit slavery "in any of the said States;" and this fact has been seized upon, and the claim set up, that he is the author of the principle which finds in Congress both a power and duty to prohibit slavery in the territories. The attempt is bold. It seeks to win the influence of Jefferson's great name. But who will point me to the passage, from his pen, which, under our Constitution, sanctions such a claim? When and where, since its adoption, did he advocate the right or power of Congress to control the local territorial laws? When the Missouri question shook the Union, did his potent voice proclaim that the people of the North were right? Where was his censure of the South—his justification of the North? When that tone, "like the fire-bell in the night," struck upon his ear, who saw the right of Congress defended by his pen? Did the man, who even doubted the power of Congress under the Constitution to acquire, believe that it possessed the power to rule territory at its will?—who doubted the power barely to hold, believe that it possessed the power to rule it without restraint? Did he, who believed that the greatest danger to the Republic was in the assumption by the General Government of powers not specifically given—did he believe, that in regard to the territories inference alone could rightfully clothe it with despotic power? Contrast his doctrines with the claim. Where is the line, in all his writings, which does not stamp it beyond mistake? The proposition of Mr. Jefferson was made in 1784, before our Constitution was adopted. That instrument defines and fixes the power of the General Government, and under it his doctrines are utterly repugnant to such an exercise of Congressional power. And yet the advocates of "the proviso," with wondrous coolness, claim him as its author! Can assurance itself go further? But how fairly it sinks into the ridiculous, when we read his letter to John Holmes! and how complete the climax, to suppose that a man, who denied the power of Congress in any case beyond the specific grants of the Constitution, was willing to find it in an inference, when the object was to *prevent* the spread of slavery, though he believed that its "*diffusion*" would be an advantage! Can anything be more preposterously absurd?

But was the ordinance of 1787 binding, if in opposition to the will of the people in the territory of the Northwest? It appears to be divided into two parts: The first makes provision for the temporary government of the territory, while the second proposes to establish certain principles. This latter, however, it evidently concedes, could not be done without the people's consent, and therefore it assumes, that the consent is given, and declares the articles to be a compact to which the people are a party.

That it was not intended as a Congressional restraint upon the people's power, is shown by the fact, that the temporary provisions were subject to alteration by the people's action; and the reason given for that part within the "compact," declares its object, not to be restraint, but to extend "the fundamental principles of civil and religious liberty."

The States, whose cessions were subsequent to its passage, understood it as a guaranty of rights. The preamble of North Carolina's deed, sets forth, as one reason for its execution, that the inhabitants were desirous to obtain more ample pro-

tection; and the deed stipulates that they shall have all the privileges of the people in the territory of the Northwest; that the United States shall support a government similar to that, and protect the inhabitants, &c. So in Georgia's cession: "That the territory thus ceded, shall form a State, &c., which ordinance shall, in all its parts, extend to the territory contained in the present act of cession, that article only excepted which forbids slavery." Thus—as in the case of North Carolina—showing that, with the exception of the slavery clause, Georgia claimed the ordinance as a guaranty. If she had considered it restrictive upon the people, it is reasonable to suppose that she would have stipulated against, instead of for, it. Congress, too, seems to have generally considered the ordinance in the same light. "The 'inhabitants shall be entitled to, and enjoy all and 'singular the rights, privileges, and advantages, 'granted," &c., is the language which it has used in applying it to newly-created territories. That every part of it depended for its obligation upon the assent of the people in the territory, would hardly seem to admit of doubt. In speaking of the compact, the supreme court of Ohio, in Hutchinson *et al.* vs. Thompson, 9 Ohio, says:

"I have called this part a compact, because it is so termed in the instrument; but if it were not for some things which have since taken place, there might be great difficulty in regarding it in that light. There was, in reality, but one party to it, originally, and that was the General Government" "The State may, by its own act have converted that into a compact which was before only a fundamental act of Congress." "The clause in question, (one in relation to the navigable waters,) so far as it regards the people of the territory, is a *guaranty* to them against the interferences of Congress—that is, in other words, a limitation on the power of the Federal Government, and not a prohibition to the new States."

As I have said, the temporary provisions of the ordinance could be altered by the action of the people in various ways; and the very attempt to make a part of them matter of agreement, shows that its authors deemed the people's assent necessary to their validity. The unlimited power of the people over their domestic legislation, their right to pass their own laws, and to regulate their own affairs, could not be overruled by Congress, nor could the people surrender it by compact. And this is the doctrine of the courts in the States formed from the territories to which the ordinance was applied. The supreme court of Ohio, in the case just quoted says: "The people of a State 'have not even the right to cede to the Government 'of the Union, any of those powers which apper-'tain to its domestic jurisdiction, and which go to 'make up the idea of a distinct State." The same doctrine is laid down by the Federal courts in that circuit. "A State cannot divest itself of its es-'sential attributes of sovereignty. It cannot enter 'into a compact not to exercise its legislative and 'judicial functions, or its elective rights; because 'this would be to change the form of government 'which is guarantied by the Federal Constitution."—Spooner *vs.* McConnell, 1 McLean. And thus, despite the provisions of the ordinance, even if we assume it to have been a compact, the people of a State may form a constitution and a government, regardless of it; and this as true of the people of a territory, as of a State. It is one of their inalienable rights—a right inherent in them; and notwithstanding the ordinance of 1787, the people of Ohio may to-morrow establish slavery within her limits. The men who framed the constitution of that State, were familiar with the ordinance; they had lived under its provisions; but fifteen years at that period, had then elapsed since its passage; and though they conformed their action to it, they understood how far it could limit the people's power. In the bill of rights, which they attached to that instrument, they have proclaimed, in the most solemn form, that the people have, "at all times, the *complete* power to alter, reform, or abolish their government, whenever they may deem it necessary." The declaration is not involved, but simple, and, to use its own language, complete.

One fact seems conclusive. In various acts authorizing the formation of State governments, it is stipulated by Congress, that the constitution to be formed, shall not be repugnant to the principles of the ordinance; and yet the ordinance declares that they shall be admitted on an equal footing with the original States. The power of the original States was sovereign over every question of local right; and the resolution of 1780, and the terms of cession by the States, stipulated for the same power in the new States.

The slavery clause does not affect the personal rights of citizens of other States, and is, therefore, peculiarly a question of domestic jurisdiction, and, according to the doctrine of the Ohio courts, both State and Federal, the people cannot surrender their power over it. The application of the ordinance, then, was not understood as conflicting with the full and free sovereignty of the people, nor are the acts of Congress, in relation to the subjects of the ordinance, to be understood as restraints, but simply as affirmative of the people's rights.

Two sorts or grades of government appear to have been provided by the ordinance for the territories. Both are exponential of, and adapted to, the ability of the people to protect themselves. The first was composed of a governor, with judges, and a legislative council, appointed by the President, though, in one or two instances, it was elected by the people. The second, besides the governor, was to have a general assembly—that is, a legislative council and an elective house of representatives. In the first, the legislative power of the territory was placed in the hands of the governor and judges, or governor and legislative council; and in the second, it was lodged in the hands of the governor and general assembly. Where the ordinance was applied to the territory, the power was declared to extend to the making of all laws not inconsistent with its principles and articles; but in territories where the ordinance was not applied, Congress declared that the legislative power of the territory was only limited by the Constitution and laws of the United States. In the first grade, Congress reserved the right to disapprove the laws, and declared, that "after which, they were to be of no effect;" but in the second, this reservation was omitted until the passage of the act establishing a territorial government for Wisconsin. That act was passed in 1836. It provided for a government of the second grade, and for the first time interrupted the settled practice in regard to governments of that kind. One of its provisions requires, as in governments of the first grade, that all laws enacted by the ter-

ritorial legislature, shall be submitted to Congress, and claims for it the right to "disapprove" them.

This was an assumption of power till then unknown. It violated a practice which had continued from the formation of the Government, until that time, and found no sanction in the ordinance of 1787. Once adopted, however, the principle was retained, and, in succession, applied to Iowa, Oregon, and Minnesota. The non-participation of the people in a government of the first grade arose from a presupposed inability on their part; and it seemed at least not improper, that under these circumstances Congress should watch over their interests with guardian care. This, however, was not the case in a government of the second grade; and the interference of Congress was, therefore, a violation of right. In point of practice, Congress has used the power sparingly. I find only one case in the Territory of the Northwest, in 1792; one in Michigan, in 1807; and some few in Florida, along in the years from 1823 to 1826; but these were all under governments of the first grade. Under governments of the second grade, I know of but a single instance. Thus, the practice has softened down the principle, though the principle remains; but up to 1836, the right to control, in local matters, the will of the people in the territories, was never claimed by Congress. Congress has passed more than one hundred acts in relation to the territories, yet they are almost entirely upon the same subjects. I know of but two exceptions, prior to the date of which I speak; one related to the Territory of Orleans, and prohibited the importation of slaves from without the limits of the United States, or from any place within them, if imported into the United States susequent to the year 1798; and the other related to the Territory of Mississippi, and prohibited the importation of slaves from without the limits of the United States. Slaves, however, were held in Orleans and Mississippi then, and slavery has never been interdicted there by any authority before, nor since. But these provisions were enacted before there was a general assembly in either of these places, and besides were supposed to be legitimately within the power of regulating commerce, and therefore within the warrant of the Constitution.

The contemporary understanding of the extent to which the ordinance was obligatory on the people, is partly shown by a single fact. It is not conclusive, but it shows some of the impressions of the day. I allude to the petition presented by certain citizens of Virginia, to the Territorial Legislature of the Northwest, asking permission to settle in the territory with their slaves. The ordinance had just been passed. The petitioners were familiar with it, and must have been impressed with the popular understanding of its power. The permission was refused; but that might have been, and probably was, from policy. But the request is evidence that the petitioners at least did not understand the ordinance as paramount to the people's sovereign will. A similar case, I understand, occurred in Indiana. As a guaranty, the ordinance could not prevent the people from regulating their own affairs; and their right to make their own laws was recognized by the spirit of the Congressional acts.

But admitting, for the argument, that the ordinance was, to some extent, an act of power over the people—it must be admitted, on the other hand, that it was one which necessity required. Scattered over that vast region, their thin numbers could not support a government, and under these circumstances, Congressional aid was a kindness. But a gift is not evidence of a right on either side. The calls of humanity may require me to enter my neighbor's house, but a thousand charitable visits gives me no legal right to cross his threshold in opposition to his will. Benevolence or necessity may justify Congressional interference, but its extent must be measured by their limits. The creation of a State government, of necessity sets aside the Congressional local laws, and, as that can be created at their own instance, these laws at last depend for their validity upon the people's implied assent.

If we look to the practice in relation to the anti-slavery clause alone, we find that it has been applied to the territories of Ohio, Indiana, Illinois, Michigan, Wisconsin, Iowa, Oregon, and Minnesota—eight in all. It was specially excepted in regard to Tennessee, Mississippi, Orleans, Missouri, Alabama, Arkansas, and Florida—seven. The precedents then stand eight for, and seven against; and in point of authority, amount to nothing. They amount to nothing as a matter of authority, because, as a question of power, it seems to have been settled or exercised in every case but as an echo of the will of the people in the territory, and therefore they afford no evidence of the power to act in opposition to that will—in other words, they are not evidence of any power in the case. Considered as a matter of policy, the precedents show that Congress has held an even hand—equalizing its prohibitions and consents. It is true that North Carolina, in her cession, stipulated for Tennessee, and that Georgia stipulated for Alabama and Mississippi; but it is well known that the right of Georgia to the latter was but of light esteem, and that that territory was established before her cession. On the other hand, it may be remarked, that the five northwestern States were all embraced in the ordinance of 1787, though, it is also true, that it was specially recognized in its application to each of the territories within the original bounds.

Louisiana contained slaves, but there were none, or rather there were no more, in the territories which now compose the States of Arkansas and Missouri, than there were within the limits ceded by Virginia; and it will not be denied, that the power of Congress over those territories was quite as unlimited as it was over the Territory of the Northwest.

Conceding, then, all that can be asked, the settlement of the question in Arkansas, Iowa, and Minnesota, was the result of the Missouri compromise, of an agreement—an agreement independent of, and behind, the question of power; and if we except these territories, the cases are exactly equal, in point of number, where Congress has and has not applied the interdict to slavery. Whatever might otherwise have been the result, Oregon had, by an act of her own people, forbidden slavery within her limits, and Congress could safely declare in affirmation of what had been already done. So far as practice goes, then, the general facts stand thus: For nearly half a century, ending in 1836, Congress uniformly and practically recognized the right of the people, through their territorial legislatures, to pass their own laws, uncon-

trolled by Congressional action; but, since that period, that body has assumed the power to control them.

So far as the slavery clause is concerned, though Congress has acted, its action has been both against and for it; as a matter of practice, its action stands both ways—as often one side as the other; but in every case it appears to have been in conformity with the will of the people upon whom it was proposed to act. These facts furnish but one conclusion. If we are governed by the practice of the past, the people of the territories will settle this question for themselves; and however we may be furnished with the indications of their wish, we shall hereafter, as heretofore, go through the useless form of enacting what they shall already have willed.

Kentucky, Vermont, and Tennessee, were admitted into the Union without any other legislation than simple acts of Congress to that effect; but in 1802 it was discovered to be necessary for Congress "*to enable*" the people of a territory to form a constitution, &c.; and accordingly, Congress passed an act, which it styled to be An act *to enable* the people of Ohio to adopt a form of State Government, &c., and in it specially "*authorized*" them. This precedent fell into practice, and continued, with an exception in the case of Maine, from that time down to the admission of Missouri. But the people of Arkansas, Michigan, and Iowa, thought that they possessed sufficient authority in themselves; and accordingly set about and finished the work without asking Congress to assist. They were subsequently admitted like other States, and I apprehend that their power or right to act as they did, was as good, and no better, than it would have been if they had reversed or set aside the slavery, or anti-slavery, or any other clause in the act of Congress, providing them with territorial governments. But do not these facts form a beautiful commentary upon the value of any practice under our Government?

If the people of a territory have the right to form a constitution and adopt a State government, without the consent of Congress, is it not absurd to talk of the power or right of Congress to make the local laws? If the people have the power to form a State government at their own instance, the fact is conclusive of their right to set aside all Congressional enactments in relation to local matters among themselves. It proves that the power of legislation is native and inherent in the people, and that without their assent the acts of Congress must have been without obligation or effect. Our history shows that the people of a territory have the right to form a constitution and adopt a State government, without the intervention of Congress. If, then, after the perfect organization of such a government—a government which should be perfectly compatible with the Constitution of the United States, and compatible with the rights of other States—Congress should refuse to admit the State into the Confederacy, would Congress, in that event, possess the right to govern it by local laws until it pleased to admit the State as one of the Federal Union? Questions of boundary affect the rights of parties outside of the State, and might be a justifiable objection on the part of Congress; but I omit questions of the sort in the case I put. The answer exhibits the real power of Congress over the people in the territories.

But the power of Congress over the territories is claimed for another reason. It is admitted by some, that the Constitution is silent in relation to it; but they contend that the power necessarily follows upon the right of the Union to acquire them. The Supreme Court, 1 Peters, 542, says, that the power to acquire territory resulted from the power of making treaties. Mr. Jefferson, however, doubted the reasoning. But we are cited to the acts of Congress and the opinions of the Supreme Court, to show that the exercise of the power has been sustained. That the Supreme Judiciary has recognized these acts, I of course admit, and I admit also the patriotism and the learning of the gentlemen on that bench; but still, as other men, they are subject to the prejudices of their station, and in the language of Hallam, "too ready to adopt any principle which their usually received authorities may sanction." The page of history shows many an instance where the judiciary has sustained a right against the arm of power; but I have yet to read the first in which it recognized a right in opposition to the precedents in the books. It will not tear down the props of its own power; it will defend liberty where it exists; but the Judiciary will never introduce it.

The feudal law granted to the feudatory the right of local legislation; but the policy of the sovereign gradually crushed these private rights, and annexed the power to the crown. This changed that law, and established the fiction that every civil and personal right is held by the sovereign grant. In England, the spirit of liberty modified the doctrine, and claimed for the Parliament certain rights, the effect of which is to compel the King to exercise particular powers through and with that body. But with this modification the doctrine is the law of England in relation to the colonies at this day. In the language of 6 George III., c. 12, "the Imperial Crown and Par-'liament of Great Britain have full power and 'authority to make laws and statutes of sufficient 'validity to bind the colonies, subjects of Great 'Britain, in all cases whatsoever." Do you remember the declaration? It led to the independence of the United States.

The different kinds of government established by Great Britain, in her colonies, all agree in looking to the crown as the foundation of their power, and the colonial laws rest their authority upon it. The Imperial Parliament has the right to alter them, but the King must grant the authority to the colonies to enact them. Under the English law, all the forms of colonial government assume that the people have no natural rights, but that the crown, being possessed of all authority, can grant them such privileges as its benevolence may suggest. The principle is as old as the law of force, and has been applied in every age wherever it has ruled. It was this that created the proconsular governments of Rome. In the early ages of that Empire, she incorporated her conquests with herself, and admitted the conquered people to all the Roman rights; but as her boundaries were extended, she diminished the privileges of her provinces—she established liberty in the centre, but tyranny in the extremities. The legitimate consequences followed. The strength of the provinces added nothing to the power of the Republic, but on the contrary enfeebled it. They regarded the loss of

liberty at Rome as the epoch of the establishment of their own.

The pages of history are uniform in regard to two facts. Every nation has treated their conquered provinces as though their people had been divested of every right, and every people who have thus been treated, have felt that their native rights were superior to the laws imposed upon them. The same principles have been applied to colonies, and, as a consequence, there never has been a colony, from the days of the Phœnicians down, in which the people have not felt aggrieved; and so it must ever be wherever a Government is based upon the unjust notion, that the people have no rights apart from those conferred upon them by the ruling power.

The Supreme Court of the United States, like the courts of the different States, is not fond of coming into conflict with the power of the legislature. It found Congress apparently exercising a legislative jurisdiction over the territories, and it looked for reasons to sustain it. In the search, the authorities which they usually received on other subjects, were consulted, and the law books of England became their guide. "The jurisdiction of the United States over the territory in question, is as supreme as that of Congress over what the nation has acquired by cession from the States, or treaties with foreign powers, *combining the rights of the States and General Government*," said the Supreme Court, in the case of the Cherokee nation against the State of Georgia, 5 Peters, 46; and they had laid down the same doctrine before, in the case of the American Insurance Company against Canter. This covers the whole ground; and with the exception that the government must be republican, it would invest Congress with the colonial power of both the British Parliament and Crown.

Mr. Justice Story, in his Commentaries, tells us, "that the power of Congress over the public territory, is clearly exclusive and universal, and their legislation is subject to no control, but is absolute and unlimited, unless so far as is effected by stipulations in the cessions, or the ordinance of 1787." This is precisely the English law, and leaves no doubt as to the authorities which led to his conclusions, and yet the doctrine is advanced in relation to a power drawn from a provision of the Constitution, which, in the case I have quoted, is expressly acknowledged to relate "to lands" alone, but which the court admits "must be considered the foundation upon which the territorial governments rest." What a frank admission, that they can find no other spot on which to place it! and what broad conclusions from such narrow grounds? In the same case, the court admits that the clause was inserted "to enable the Government to redeem the pledge given by the old, in relation to the formation and powers of the new, States." What pledge? Why the resolution of 1780, "to cause them to be settled and formed into new States, with a republican form of government, with all the rights and privileges of the old States." But was it necessary to this, that a legislative power should be exercised by Congress, "subject to no control, except so far as is effected by stipulations in the cessions or the ordinance of 1787." If it was, and the Constitution has so far violated its own provisions as to give it, then is Justice Story right, and the power of Congress "is absolute and unlimited;" or, as Judge McLane has phrased it, if the doctrine be true, "it may establish a despotism," to carry out that pledge.

Chief Justice Marshall, however, does not see the way quite so clearly. In the case of the American Insurance Company *et al. vs.* Canter, he says, "*Perhaps* the power of governing a territory belonging to the United States, which has not, by becoming a State, acquired the *means* (not the right) of self-government, *may* result necessarily from the fact, that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern *may* be the inevitable consequence of the right to acquire territory; whichever may be the source whence the power is derived, the possession of it is unquestionable." The doubt and uncertainty of the Court is here obvious at every step. The right of the people to self-government, he assumes as a matter of course; though the Judge seems to think that it is only by a State government that they can acquire the *means* to exercise it. But, however that may be, he concedes that power so far as they do possess the means; and if his "*perhaps*" is true, it is necessity alone which justifies the intervention of the General Government; and as a consequence, its extent must be measured by it—in other words, it has no right, but necessity may justify its interference. If, on the other hand, it is "the inevitable consequence of the right to acquire territory," it follows that, as it can only acquire the territery for national purposes, so must it govern it for the same object; and as its powers for that object are specifically defined, so can it only use such as the Constitution has conferred; but as the Constitution confers no power of local legislation except as named, so Congress can exercise no power of the kind, but must govern it as it governs the other portions of the Union—that is, by general and national law. It has been asserted that the Constitution does not extend to the territories; but we must remember that Congress derives all its powers from the organic law; and if that law does not extend to the territories, the body which derives its functions from it cannot exercise them beyond the boundaries of its obligation. The allegiance of the colony is to the organic law of the country to which it belongs; and allegiance without the reciprocal obligations and jurisdiction of the sovereign, is a simple absurdity. The one cannot exist without the other. If the territory owes allegiance to the Constitution, the Constitution from necessity covers and protects it.

If the power were derived from either of the sources named, it would be limited on the one hand to the calls of necessity, and on the other by the provisions of the Constitution. But the Judge felt it too unsafe to venture himself on either. The Supreme Court had held, that the provision of the Constitution in relation to territories, related to them merely as lands; and he felt the absurdity of wringing out of it a contradictory meaning. Congress had exercised what appeared to be a power, and he was disposed to sustain its action; but where to find the authority, was an embarrassing question. It seemed that little had been said in opposition to the right, and it was easy to assume, that the possession of it was unquestioned; but the source from which the power was derived, was

beyond his sight. The English authorities were to the point, but their doctrines sprung from a theory of government precisely opposed to ours. According to the English law, the king being the fountain of all political power, the people in the colonies can have no rights until the Crown shall grant them; but in our country, the Government has no power but what the people gives it. And even there, what if an English lawyer should inquire into the acts of John in Ireland, or into the prerogatives the Edwards had in Gascony or Guienne, to ascertain the precedents of the past? "God 'forbid, (says Hallam,) that our right to a just and 'free Government should be tried by a jury of anti-'quaries." And surely the free citizens of our territories may pray with equal fervor, that their rights shall not be determined by the doctrines of a kingly rule. Chancellor Kent has seen the absurdity not only of the action of Congress, but of the doctrines of the Supreme Court.

He tells us in his Commentaries, "that upon the 'doctrine taught by Congress, and even by the judi-'cial decisions of the Supreme Court, the colonists 'would be in a state of the most complete subordi-'nation, and as dependent upon the will of Congress, 'as the people of this country would have been 'upon the King and Parliament of Great Britain, if 'they could have sustained their claim to bind us in 'all cases whatsoever. Such a state of absolute 'sovereignty on the one hand, and of absolute de-'pendence upon the other, is not congenial with the 'free and independent spirit of our native institu-'tions; and the establishment of distant territorial 'governments ruled according to will and pleasure, 'would have a very natural tendency, as all pro-'consular governments have had, to abuse and op-'pression."

But perhaps no better evidence can be given of the utter absurdity of Judge Story's construction of that clause of the Constitution, than is given by the Judge himself. He tells us that, "notwith-'standing the generality of the opinion, that Con-'gress has no power to erect corporations, and that 'the very power was refused, we *see* that the power 'is incident to that of regulating the territories of 'the United States."

Most men would reason exactly the other way; but according to the Judge, we have not only the power to legislate for the territories, but the general power to establish incorporations of every kind, at the will and pleasure of Congress. A similar train of reasoning might find, in the same clause, authority enough to enable Congress to carry on the General Government, without the aid of any other provision; indeed, could he not have proved that it was an entire Constitution of itself? So wild are the conclusions to which we are led by the first departure from the plain and simple meaning of our organic law!

Well might Gouverneur Morris say:

"What can a history of the Constitution avail toward interpreting its provisions? This must be done by comparing the plain import of the words, with the general tenor of the instrument. That instrument was written by the fingers which wrote this letter. Having rejected redundant and equivocal terms, I believe it to be as clear as our language would permit. * * * * * * * But after all, what does it signify that men should have a written constitution, containing unequivocal provisions and limitations? The legislative lion will not be entangled in the meshes of a logical net. The legislature will always make the power which it wishes to exercise."

How true? And now we see an attempt to derive from a plain and simple clause in relation to the public lands, an absolute and unlimited power in Congress, to legislate for the free people in the territories.

But it is important to remember that, notwithstanding the Supreme Court has recognised the power, it has never yet decided upon its exercise, as a question of right. It has presumed the right, but it has specially waved all inquiry into the fact; and so it expressly states. It declares that in such matters, it is its duty to conform its decisions to the "legislative will."

In Foster & Elam *vs.* Nelson, 2 Peters, the court says:

"Its duty commmonly is, to decide upon individual rights, *according* to those principles which the political department of the nation have established." * * * "It is the province of the court, to conform its decisions to the will of the Legislature, if that will has been clearly expressed."

Again: in the case of United States *vs.* Arredondo and others, 6 Peters, the court says:

"This court did not deem the settlement of boundaries a judicial, but a political question—that it was not its duty to *lead*, but to *follow* the action of the other departments of the Government," &c.—

and quotes the case I have just referred to. The same principle is again laid down in the case of Luther against Borden—the celebrated Dorr case.

In the case of the Cherokee Nation *vs.* the State of Georgia, Judge Baldwin declares: "I have 'followed the rule laid down in Foster and Elam 'vs. Nelson." "If the course of the nation has 'been a plain one, its courts would hesitate to pro-'nounce it erroneous." And no avowal could be plainer, that in regard to all political subjects, the court merely follows the will of the legislature: then how absurd to say, that the Judiciary has sustained it! It avows that it will sustain any political action that Congress may choose to take; but will it be pretended, that by this it gives the sanction of its official opinions to every political act? There stands the fact; the court has never expressed an opinion in regard to the right or wrong of the power itself. When it shall have formally and directly pronounced upon it, it will then be time to quote the action and opinions of the court; but until then, it will hardly do to quote the Judiciary as an indorser of the propriety of the exercise by Congress of the power claimed.

By the laws of England, if an uninhabited country be planted by English subjects, all the essential English laws are immediately there in force. The right of suffrage is fundamental to a democratic government; in effect, says Montesquieu, it is as important to regulate how, by whom, to who, on what, the suffrages are to be given as it is in a monarchy to know who is the monarch, and in what manner he ought to govern. Under our Government, the right of each community to make its own laws, is of the very essence of our institutions; and it would seem to follow that, even according to the doctrines of the English law, the citizen's rights must travel with him throughout the extent of our domain. Such was the Roman law; Gavius was in Sicily when Verres scourged him, but he was a Roman citizen, though only by isopolity, and the Roman law avenged him. The citizen's rights go with an American ship throughout the globe; but I am told that, though I have certain native and inherent rights, if I step my foot on territorial soil, these rights will vanish, and I shall become subject to the

unlimited and absolute will and power of Congress. What a doctrine for an American creed!

In acquiring the Territories of California and New Mexico, the Federal Government unquestionably acquired the right to govern them; but how? Can the acquisition of territory confer upon government a power unknown to it before? Can it, or does it, create and invest the General Government with a new power—one not given by the Constitution? If so, what are its limitations? where are its restrictions? Or is it a power without limit? If it can legislate upon this subject, what is there to hinder it from legislating upon any other? If it can legislate in one way, why not in another? If it can establish one form of territorial government, what is there to prevent it from establishing any other? If, however, it is limited and restricted by the spirit of our Constitution, must it not be limited by the letter of the Constitution itself? But the Federal Government is the creature of the people and the States, and is but the trustee of delegated power. It can neither create nor acquire new power by its own workings. Nor can it possess or hold any power but what its makers gave it; and all they did give it, the Constitution itself sets forth. The power to govern territories, like all its other powers, is given and limited by that instrument; and if Congress cannot get the power from it, it never can acquire it.

What, then, is meant by the assertion, that the right to govern territories is consequent upon the right to acquire them? Can Congress govern them in a manner incompatible with the spirit of the Constitution—incompatible with the spirit of our institutions—incompatible with the native and inherent rights, not only of our own citizens, but according to the principles of our Government—incompatible with the native rights of all men? Vague and indefinite ideas only blind the mind, and veil the folly of its conclusions; but error, touched by the spear of truth, will start up and betray its proper form. Our Government is but the organ of the popular will—the organ of the popular will in the manner and form prescribed by the organic law. In the Declaration of Independence, our fathers asserted, that all governments derive their just power from the consent of the governed; and if the principle be true, it is just as true in California, as it was in the old thirteen colonies. They charged it as a grievous wrong, that the Government of Great Britain interfered with the colonial local legislation, and yet we, their descendants, propose to interfere in the same way in relation to our territories. Congress passed a law, to *enable* the people of Alabama to form a constitution, and to become a State; and the presumption would seem to follow, that the people of that State owe their present rights to that benevolent act; but who believes it? I choose to place my rights, as a citizen of Ohio, on loftier grounds than Congressional gifts. I trace them to a higher source. If all men are endowed with equal rights, no man, or community of men, have any other right to rule and govern others, than the right of force, if they rule and govern them in opposition to their will. The Federal Government was created for general and national objects; but the sovereignty of the people, acting through and in their state and local organizations, is the only power which can establish for each its own peculiar laws. On this distinction hangs the nation's safety. The different States could never agree in relation to their local laws, but the continent itself would find its interests under our Governmant as a nation. Preserving unimpaired the sovereignty of each community, the Confederacy may swell its numbers, and extend its bounds; but if you violate that, the foundation of your national power is gone. In assuming the power to control the local legislation of the territories, you insert the feather end of the wedge, which driven home, will rive your Union in twain. Your practice over the territories will prepare you for claims over the States; and there is no safety, except in the undisturbed exercise of the people's sovereign will, each organization moving and acting within its own legitimate sphere. These are the principles to which I cling. They are "a lamp unto my feet, and a light unto my path," and wherever they may lead me, I shall go; in the language of Judge Baldwin, "nothing fearing that I can discover some sound and safe maxims of *American* policy and jurisprudence, which will always afford me light enough to decide."

We assert that all just power is derived from the consent of the governed; that the people have the right to alter or abolish their government; that all men are born free and equal; that there are certain natural and inalienable rights; and yet declare that the people in our territory, composed, too, as they may be, principally of our own native born citizens, have no rights whatever, but such as the benevolence of Congress may confer! Our institutions are based upon the doctrines, that in a political sense, the people are the fountain of all power and the source of all authority—that they have instituted governments for their own ends—that they have a right to establish and modify their governments at will—and that within the bounds of each community, as such, they are sovereign and independent. They created the General Government, and conferred specific powers on it. These powers are national in their character, and by compact made supreme; but they are not innate, nor is the Government sovereign in itself, because the only sovereignty is in the people. As in a state of nature no reason can be given why the rights of one man should be superior to another, we conclude that the rights of all are equal. Government, then, must find its power in their consent. The aggregation of individuals to form a government, establishes but a unity as in relation to a similar unity formed by others; and the governments of the earth stand toward each other like individuals in a state of nature—the right of each perfect and independent. Without organization, the sovereignty of the people must necessarily be silent; but it nevertheless exists, and all authority not emanating from it, has but the right which sufferance gives. The inherent and natural rights of men are the same, whether in a territory, a monarchy, or an organized republican state—the same in New Mexico as in New York; and the wrong of interference is the same in either place, because the compact is the only authority in both. In a territory, to use the phrase of Judge Marshall, the people may not have "the *means* of self-government," and the aid of Congress may be right; but it is right only to the extent that the "*means*" are wanting, and the people themselves consent.

The fact has been quoted, that the territorial judges have enacted laws; and it has been exultingly asked, how Congress could delegate this power without possessing it itself. In return, I ask, if Congress can delegate a legislative power at all? But, to let this pass, there is the other question to be answered. Did not those laws for their obligations rest at last upon the people's implied assent? If they were binding as against the people, Congress could have kept them in force at their own will; and yet the people had a right to make themselves a free and independent State. The absurdity is complete. Does Congress possess the right independent of, and apart from, the people of the territories, not only to make their local laws, but to delegate that power to others, regardless of their will? How is the power derived? What power on earth conferred it? What principle gives it sanction? The law of force is not the law of right. These contradictions vex the simplicity of our Government. Its theory recognizes the sovereignty of the people, and the independence of the States, the supremacy of the Constitution of the Union, the national power of the Federal Government, and the inherent power of each community to regulate their own affairs.

It is absurd, said a distinguished man, to suppose that the people of the territories have a right to control the character of their laws; because, said he, "the first half-dozen squatters would become 'the sovereigns, with full dominion and sover-'eignty over them, and the conquered people of 'New Mexico and California would become the 'sovereigns, vested with the full right of exclu-'ding even their conquerors."

When New Mexico and California were ceded to this Union, the political allegiance of their people changed, and that allegiance is now due to our organic law—the Constitution of the Republic. The people of the States are sovereign; but they must respect that Constitution, as well as the people of California. No State can exclude the citizens of another State, nor can the people of a territory do so. But because a State cannot exclude them, does it follow that its people are not sovereign? If not, why draw a different conclusion in relation to the people of the territories? So incomplete, in my judgment, has been the grasp which eminent men have taken of this subject. But neither bold pretension, nor muddy metaphysics, can lead us to the truth. Reason must guide us to it, and impartiality alone can be successful in the search. There is no sovereignty in governments. The sovereignty is in the constituency; and it is this distinction which makes the difference between the English law and ours, and modifies in our country the law of nations, in regard to colonies, or conquered countries, which the publicists have laid down. Flowing as it does from their native and inherent rights, one people cannot of right be sovereign over another, nor, from the nature of things, can any government be established with greater powers that the makers themselves possess.

The rights of every people being the same, if one asserts dominion over another, it assails the foundation of its own. That one State can be dependent on another, and yet sovereign, is acknowledged; and it is obvious that the rights of each member of a confederacy may be abridged by the common welfare. "The interest of the whole society is binding upon every part of it." No rule short of this, says Paley, "will provide 'for the stability of civil government, or for the 'peace and safety of social life." "No particu-'lar colony, province, town, or district, can justly 'concert measures for their separate interests, 'which shall appear at the same time to diminish 'the sum of public prosperity;" and with this restriction upon their natural rights, and in consonance with the duties imposed upon them by their allegiance to the Constitution of the Union, I cannot help recognizing as a natural and legitimate right, the privilege of the people in the territories to make their own laws, whether these laws relate to slavery or not. These, then, are facts:

1st. The provision in the Constitution in relation to territory, relates to the old Northwest territory, and relates to that "as lands" alone.

2d. History shows that the framers of our Constitution did not intend, by any provision of that instrument, to confer any power upon Congress in relation to territories, but such as might be *needful* to carry out the pledge in the resolution of 1780—a pledge to *dispose of* the lands as a common fund, and to cause them to be settled and formed into republican States.

3d. The practice of the Government in relation to slavery in the territories has been varied and conflicting; but so far as we can discover, it has always been in conformity with the wish of the inhabitants, and slavery has never been interdicted in opposition to their will.

4th. For nearly half a century Congress recognized the legislative power of the territories as absolutely vested in the duly elected territorial legislatures; but since 1836, it has assumed to possess a supervisory power over it.

5th. The judiciary has never expressed an opinion in regard to the right of Congress to exercise power over the subject; and

6th and last. The very elemental principles and spirit of our institutions imperatively demand for each community the right to frame its own domestic laws.

With these facts, my conclusions follow—

Slavery I hold to be a great political and moral evil. It has brought upon us the reproach of the civilized world; but its doom has been pronounced, and neither passion nor interest, nor both combined, can avert its fate. But my feelings cannot blind me to the law. The extension of slavery will be prevented by other means than Congressional prohibition. The law of Mexico prohibited slavery in the territories we acquired from her, and that law is in force there yet. The origin of the law is to us a matter of no moment. The acknowledgment by the proper authorities of Mexico, of such a statute being in force, concludes the case—no judicial court in Christendom would go behind this fact to inquire into the legality of its enactment. But the "proviso" is a shibboleth. It is made the test of men's favor toward slavery, and I suppose that it will be duly honored, while its votaries wait until its bannered chief, like the veiled prophet of Khorassan, shall explain it all. What matters it to them that the soil, the climate, the productions, the laws and customs of the country, all prohibit slavery in New Mexico and California? What matters it that the object can be accomplished—the end gained—by the natural coming of events? The means, the particular means,

alone will answer. We wonder at the folly of the factions of the Blue and Green in the Hippodrome—we marvel at the senseless madness of the Guelph and the Ghibbeline; but the pen of sober history will write, with equal clearness, of the folly of this thing. We repeat—while we wonder at other people's errors—the people of New Mexico, as the people of California, have the right, and will settle this matter as I desire; and were this all, I should be content to leave it there; but the safety of the Republic is above all other law. The present Executive has been pledged for the proviso as against it in the South, but as in favor of it in the North; and my constituents believe that this was an atrocious fraud; they think that its exposure is demanded by the highest interests of the Republic; and they say to me, that though Congress may have no legal power to make such a provision an effective law, yet

> "Wrest once the *law* to *our* authority
> To do a great right do a little wrong,"

and bring these pledges to the test; not to give the sanction of Congress to the proviso—not to sanction it by my vote, but as the means to accomplish the object which they avow. They think that he should be impelled to the responsibility of action. The policy might protect the Republic hereafter; and if so, the necessities of the State would only vindicate its strength. Let the State receive no detriment, were the solemn words which annulled the laws of Rome. They found their origin in the exigencies of the Republic, and dashed down the power of the Tribunes. To utter them, shows the evil of the times; but the responsibility should be to those who caused it. Should we cling to forms when they make the substance perish? or maintain a lesser to the destruction of a greater right? Without the healthy action of the body, limbs and all must die. The Republic must be pure. We lop the bough to save the trunk. If, contrary to my belief, the provision shall receive the Presidential sanction, our southern brethren will remember that the result is one which they have fairly earned. To them is the honor of the last political campaign. We have tried to please them, but they exact too much. Self-immolation is too dear a price to pay for the friendship even of the South. One by one the best men of the North have fallen under the load which the Democrats of the South have placed upon them; and the result in the South, at our last election, shows what we in the West may expect as our return. The yoke is too unequal for us to work together. With fairer terms between us, we both may look for better days; but those days will never come until fairer terms are made.

Slavery is an exciting topic. The South feels warmly on it; strong terms have been used; menaces have been made, in this debate, and the integrity of the Union has been threatened. These shocks wound, though they may not sever, it. The mighty oak, when smitten by the storm, may show no hurt, but its strained roots will yield until in some still hour the forest is frightened by its crash. The result is in the future. The wild chariot of civil war may be driven over the dead body of the Republic. The temple may be destroyed. But if the mad purpose of those who worship at its altars, and whose heads are protected from the tempest by its walls—does lay in ruin freedom's last and noblest safeguard, then may the lover of his race despair of the liberty of man. History then will write, that neither virtue nor intelligence can protect it—that, though the noblest inspirations are implanted in the human breast, yet the providence of God has so mixed good and evil that man will become a slave to gratify his passions.